CRIMINAL YEAR SEMINAR

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Webinar

2020
Criminal Year Reporters

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Retired Judge of the Maricopa County Superior Court

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ARIZONA EVIDENCE REPORTER

ARTICLE 1. GENERAL PROVISIONS.

Rule 104(A). Preliminary Questions — Questions of admissibility generally.

104.a.060 The trial court is not bound by the Rules of Evidence in determining admissibility of evidence.

State v. Lietzau, 246 Ariz. 380, 439 P.3d 839, ¶ 13 (Ct. App. 2019) (because trial court declined to hear state's witness, there was no testimony about arresting officer's motivation in searching defendant's phone; because motions filed with trial court contained transcribed interview of surveillance officer, court could consider that hearsay in determining whether trial court abused discretion in granting defendant's motion to suppress). **(rev. pending)**

Rule 106. Remainder of or Related Writings or Recorded Statements.

106.015 If the portion of the statement that the party wants admitted does not qualify, explain, or place in context the portion of the statement that is already admitted, or if the portion of the statement that the party wants admitted is not relevant, the trial court should not admit the requested portion.

State v. Champagne, 247 Ariz. 116, 447 P.3d 297, ¶¶ 42–46 (2019) (defendant was convicted of first-degree murder, second-degree murder, kidnapping, and abandonment or concealment of bodies; although trial court correctly excluded defendant's March 19 statement, defendant sought to introduce portion of that statement wherein he said "he didn't think they had a death penalty case on him" to rebut his March 4 statement that if police found the bodies "he would face the death penalty because of his criminal past"; court held statement defendant sought to introduce was not needed (1) to complete statement already introduced, (2) to avoid introduced statement from being taken out of context, or (3) to prevent juror confusion; rather, it was separate statement from entirely separate conversation that occurred on separate date, and that fact that defendant made contradictory statements 15 days apart did not somehow make those two statements one continuous utterance; thus trial court properly ruled that Rule 106 did not apply; further, court held trial court acted within its discretion in precluding defendant's March 19 statement under Rule 403).

ARTICLE 3. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301. Presumptions in Civil Cases Generally.

380. Property — Community.

380.080 "Acquired" as used in A.R.S. § 25–211(A) was not meant to apply to compensation for an injury to the person that arises from the violation of the right of personal security, which right a spouse brings to the marriage; accordingly, compensation for an injury to a spouse's personal well-being belongs to that spouse as separate property, and the spouse seeking to overcome a presumption of asset characterization has the burden of establishing the character of the property by clear and convincing evidence.

In re Hefner, 248 Ariz. 54, 456 P.3d 20, ¶¶ 5–12 (Ct. App. 2019) (court held trial court erred by treating husband's personal-injury damages related to two automobile accidents as

community property, and remanded to allow wife to establish amount, if any, to which community was entitled).

380.090 The general rule is that property acquired by a spouse after service of a petition for dissolution that results in a dissolution is that spouse's separate property, except for property received as a result of an enforceable contractual right, such as property acquired as a result of services rendered during the marriage.

In re DeFrancisco, 248 Ariz. 23, 455 P.3d 722, ¶¶ 4–12 (Ct. App. 2019) (husband was long-time employee of Houston Astros baseball organization and in 2017 was manager of Astros' AAA minor league affiliate team; on June 23, 2017, husband served petition for dissolution on wife; after Astros won World Series in October 2017, team paid husband bonus of $28,151.26; court concluded this was not enforceable contractual right or property acquired as result of services rendered during marriage, thus trial court did not err in determining this was husband's separate property).

ARTICLE 4. RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence (Impeachment Cases).

401.imp.030 Before a party may introduce evidence about the witness's mental condition or drug use in an attempt to impeach the witness's ability to perceive, remember, or relate, the party must make an offer of proof of evidence sufficient for the jurors to find that the witness's mental condition or drug use did have an effect on the witness's ability to perceive, remember, or relate.

State v. Champagne, 247 Ariz. 116, 447 P.3d 297, ¶¶ 47–54 (2019) (defendant contended trial court abused its discretion by refusing to permit him to confront and cross-examine witness about her mental illness diagnoses and drug usage, maintaining her diagnoses of bipolar disorder, post-traumatic stress disorder, and depression spoke to her mental state and her ability to perceive events accurately, as did fact she was not medicated for those disorders and was drinking alcohol and using methamphetamine before crimes occurred; court held trial court properly precluded defendant from asking whether prescription medication witness was taking during trial was mental health medication because defendant failed to present sufficient evidence suggesting connection between any medication and her ability to recall and observe matters to which she testified; further, trial court properly precluded evidence of witness's mental health diagnoses or her failure to take medication for those diagnoses because defendant failed to show witness's ability to observe and relate events surrounding murders was affected in any way by her mental health diagnoses or her failure to take medication for those diagnoses).

Rule 404(b). Other crimes, wrongs, or acts (Criminal Cases).

404.b.cr.600 The trial court may exclude evidence of other crimes, wrongs, or acts under Rule 403 if the opponent objects on that basis and trial court determines that the probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jurors, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; because this is an extraordinary remedy, it should be used sparingly.

State v. Gentry, 247 Ariz. 381, 449 P.3d 707, ¶¶ 14–21 (Ct. App. 2019) (victim (M.R.) and defendant's step-daughter (Autumn) had son together; as result of altercation in June 2016, defendant shot and killed M.R. and claimed self-defense and defense of third person (Autumn); defendant sought to introduce following other act evidence for M.R.: (1) in August 2015, M.R. hit and damaged wall of defendant's freezer; (2) in August 2015, M.R. hit Autumn in face with table when she was pregnant; (3) in December 2015, M.R. pushed Autumn to ground when she was pregnant, causing her to go into early labor; (4) in March 2016, while M.R. was holding their baby, he attempted to kick Autumn and fell to the ground, hitting baby's head; and (5) on date of the offense, M.R. pushed Autumn, and their son had signs of physical abuse on his body; trial court allowed admission of these other acts, but precluded evidence that Autumn was pregnant in (2) and (3); court held trial court did not abuse discretion in precluding that evidence).

Rule 404(c) — Character evidence in sexual misconduct cases (Criminal Cases).

404.c.cr.020 This section allows admission of evidence of other crimes, wrongs, or acts, and makes no distinction between the admission of evidence of another crime, wrong, or act a person committed as a juvenile and one the person committed as an adult.

State v. Rose, 246 Ariz. 480, 440 P.3d 999, ¶¶ 8–12 (Ct. App. 2019) (defendant was convicted of sexual conduct with minor that he committed when he was 36 to 38 years of age; defendant contended trial court erred in admitting evidence of his juvenile adjudication for child molestation; court held rule on its face did not preclude evidence of juvenile adjudication, and declined defendant's invitation for court to add to rule, by judicial fiat, additional restriction on admission of such other-acts evidence, namely, that no evidence of act committed when defendant was juvenile may be admitted).

ARTICLE 5. PRIVILEGES

Rule 501. Privilege in General.

05. Right to Information Protected by a Privilege.

501.05.020 The physician-patient privilege does not yield to the request of a criminal defendant for information merely because that information may be helpful to the defendant's defense; to be entitled to an *in camera* review of privileged records as a matter of due process, the defendant must establish a substantial probability that the protected records contain information critical to an element of the charge or defense, or that their unavailability would result in a fundamentally unfair trial.

R.S. v. Thompson (Vanders), 247 Ariz. 575, 454 P.3d 1010, ¶¶ 9–28 (Ct. App. 2019) (defendant was charged with second-degree murder; on his request, trial court ordered hospital to disclose deceased victim's privileged mental health records for *in camera* review; court held

that, because defendant did not establish substantial probability that protected records contained information critical to element of charge or defense, or that their unavailability would result in fundamentally unfair trial, trial court erred by granting *in camera* review of victim's privileged records).

26. Waiver by Statute.

501.26.020 Because the legislature has created certain privileges by statute, the legislature by statute may limit those privileges and limit the extent of a waiver of those privileges.

State v. Zeitner, 246 Ariz. 161, 436 P.3d 484, ¶¶ 18–23 (2019) (court held that, although there was no common-law exception to the physician-patient privilege for fraud, the legislature had created exception for AHCCCS fraud).

ARTICLE 6. WITNESSES

Rule 602. Need for Personal Knowledge.

602.010 For a witness to testify about a matter, the witness must have personal knowledge of the matter.

State v. Murray (Easton), 247 Ariz. 447, 451 P.3d 803, ¶¶ 10–12 (Ct. App. 2019) (prosecutor asked victim if he recognized what was depicted in photograph that appeared to show dark-colored bale wrapped in clear plastic, and victim said no; prosecutor then asked if victim thought he knew what photograph depicted, trial court overruled defendant's objection that question had been asked and answered, prosecutor restated question, asking victim if he "[knew] what [the photograph] might be," and victim said, "No. I don't know what was in the black bag"; prosecutor then asked, "Do you think you know what [photograph is] even though it doesn't look familiar to you?" victim then answered, "I think I know what it is, it was in the house"; when asked what he thought it was, victim replied that it was marijuana; court held trial court had discretion to allow prosecutor to continue to probe victim about contents of photograph even after victim initially expressed unfamiliarity with it, and further held, because answer was cumulative to other evidence that defendant had brought marijuana to residence, any error was harmless).

Rule 604. Interpreters.

604.070 There is no authority for the proposition that only a "trained interpreter" may testify in English to the meaning of words heard in another language, thus a witness who is bilingual may testify in English to the meaning of what he or she personally heard and understood in another language.

State v. Murray (Easton), 247 Ariz. 447, 451 P.3d 803, ¶¶ 5–6 (Ct. App. 2019) (victim testified that, during confrontation, defendant said to his brother in Jamaican Patois "shoot him, shoot the boy").

ARTICLE 7. OPINION AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses.

701.010 Whether a lay witness is qualified to offer opinion is a preliminary determination for the trial court under Rule 104(a); this decision must be upheld unless shown to be clearly erroneous or an abuse of discretion.

State v. Fuentes, 247 Ariz. 516, 452 P.3d 746, ¶ 28 (Ct. App. 2019) (court found no error in trial court's preliminary determination that testimony in question was not based on technician's own perceptions and thus technician was not qualified to provide opinion testimony).

701.020 A witness who is not testifying as an expert may give testimony in the form of an opinion if the opinion is limited to one that is (a) rationally based on the witness's perception, (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

State v. Fuentes, 247 Ariz. 516, 452 P.3d 746, ¶¶ 26–29 (Ct. App. 2019) (crime scene technician testified at pretrial motions hearing and mentioned having observed shoe prints that "might look similar to the ones that the deceased's shoes may have created"; trial court asked, "And did you make that decision or did someone tell you that?"; technician replied: "[T]he detective at the time I believe said that they felt that it was—that the prints looked very similar to the shoes that the deceased [was] wearing"; based on that testimony, trial court concluded it was "absolutely clear from [technician] that he was giving opinions based on what other people told him"; court held trial court did not abuse discretion in determining technician was not qualified to provide opinion testimony in question because it was not based on his own perceptions).

Rule 702. Testimony by Expert Witnesses.

702.010 A witness may be qualified as an expert by training or education.

Lehn v. Al-Tanayyan, 246 Ariz. 277, 438 P.3d 646, ¶¶ 23–25 (Ct. App. 2019) (father contended trial court abused discretion by relying on expert's testimony because expert relied on information from mother, unidentified international law experts, and governmental informational sources; expert testified he worked exclusively on international family law matters, including international child custody matters, international child abduction prevention, and recovery of internationally abducted children; testified his opinions were based on his extensive experience and research, including official statements and information about Kuwaiti law from United States Department of State, United Kingdom, and non-governmental organizations that provide information relating to international child abductions; expert further testified he had gained knowledge about international child custody disputes, written several articles and two treatises on subject, and provided expert testimony in United States and internationally; court held trial court did not abuse discretion in relying on expert's testimony).

702.020 A witness may be qualified as an expert by knowledge, skill, or experience.

State v. Murray (Easton), 247 Ariz. 447, 451 P.3d 803, ¶¶ 13–14 (Ct. App. 2019) (after testifying about his experience and knowledge of local marijuana trade, detective testified, without objection, that evidence he saw was consistent with shipping practices common to that trade; on appeal, defendant contended state had not established detective was qualified as expert; court noted detective testified to extensive experience that would have qualified him as expert, including participation in several hundred drug-trafficking investigations, and thus was qualified to give expert opinion).

Rule 702(a). Assist trier of fact.

702.a.070 Because the Arizona legislature has declined to adopt a defense of diminished capacity, a defendant is precluded from maintaining that he or she cannot reflect upon his or her actions (or has a lesser capacity to do so); the defendant may, however, present evidence of defendant's behavioral tendencies to challenge the *mens rea* of premeditation for a first degree murder charge.

State v. Malone, 247 Ariz. 29, 444 P.3d 733, ¶¶ 8–21 (2019) (defendant contended his proffered expert testimony about brain damage was not to prove he was incapable of reflecting, but was instead offered to demonstrate brain condition that rendered it less likely that he may have done so; court concluded defendant's proffered evidence was mental disease or defect evidence, and thus was inadmissible either to show defendant's inability to form *mens rea* or a likelihood he failed to do so, and thus could not be used to negate *mens rea*).

Rule 702(b). Testimony based on sufficient facts or data.

702.b.010 A witness who is qualified as an expert may testify in the form of an opinion or otherwise if the testimony is based on sufficient facts or data.

Lehn v. Al-Tanayyan, 246 Ariz. 277, 438 P.3d 646, ¶¶ 23–25 (Ct. App. 2019) (father contended this court abused its discretion by relying on expert's testimony because expert relied on information from mother, unidentified international law experts, and governmental informational sources; expert explained his opinions about father were based on facts provided by mother and father's expert and acknowledged his opinions may lack foundation if those facts were incorrect (factual statement mother provided to expert was substantially consistent with her trial testimony); court held trial court did not abuse discretion in relying on expert's testimony).

ARTICLE 8. HEARSAY

Rule801(d)(2)(A) —Statements that are not hearsay: Party-opponent's own admission.

801.d.2.A.005 A party's statement is admissible.

State v. Griffith, 247 Ariz. 361, 449 P.3d 353, ¶ 14 (Ct. App. 2019) (defendant contended social medial communications were hearsay; because record contained evidence from which jurors could reasonably conclude that message was authored by defendant himself, trial court did not abuse discretion in admitting that evidence).

Rule 803(5). Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness — Recorded recollection.

803.5.015 This exception allows for admission of jointly constructed records (one person makes an oral statement, another writes it down) as long as each person in the chain testifies to performing his or her role accurately, or the record permits an inference that the person performed his or her role accurately.

State v. Giannotta, 248 Ariz. 82, 456 P.3d 1256, ¶¶ 11–19 (Ct. App. 2019) (victim purchased new AR-15 semi-automatic rifle; victim met defendant and showed him rifle, which was in trunk; victim went to passenger compartment to look for his phone, and when he returned, rifle was no longer in trunk and defendant was getting in his car to drive away; victim was unable to follow defendant, so he went home to retrieve his receipt, which listed rifle's serial number, and then called police to report theft; officer later called victim that day to take formal report, at which point victim provided rifle's serial number; victim testified at trial but did not recall rifle's serial number, and instead described reading serial number to police officer who made formal report; when that officer testified, he recited serial number based on his written report documenting number victim gave him; although victim did not expressly testify he recited serial number accurately, circumstances permitted inference of accuracy; although officer did not expressly avow that he recorded number accurately, his testimony allowed inference of accuracy; accordingly, serial number as reflected in officer's report was admissible as jointly constructed recorded recollection created by victim and officer).

Rule 803(6). Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness — Records of regularly conducted activity.

803.6.010 This exception allows for admission of a memorandum, report, record, or data compilation if made at or near the time of the underlying event.

State v. Griffith, 247 Ariz. 361, 449 P.3d 353, ¶¶ 5–10 (Ct. App. 2019) (victims returned home and found it had been burglarized, noting three Apple iPads were missing; based on information victims acquired from Apple, police subpoenaed Apple and obtained information about subject named Brandon Griffith; using police database, officers found a Brandon Griffith with same address as one Apple provided; police then interviewed Griffith, who explained that others frequently brought him computer devices asking him to restore devices to their factory settings, and admitted performing this service even when he suspected devices were stolen; Griffith faintly recalled that suspect in police's burglary investigation had once brought him several devices to reset, including three iPads; Griffith said he communicated with suspect through Facebook, prompting the police to obtain search warrant for Griffith's Facebook account; in response, Facebook produced, among other things, message containing photograph sent from Griffith's account and log of account's search history; when state sought to introduce Facebook documents as business records at trial, Griffith objected that they were inadmissible hearsay because state failed to provide certification or testimony required to admit them under Rule 803(6) (business records exception), or under Rule 902(11) (self-authentication if proper certification provided); court held state failed to satisfy requirement that statement was made at or near time by someone with first-hand knowledge).

803.6.020 This exception allows for admission of a memorandum, report, record, or data compilation if the information is either compiled or transmitted by someone with firsthand knowledge.

State v. Griffith, 247 Ariz. 361, 449 P.3d 353, ¶¶ 5–10 (Ct. App. 2019) (when state sought to introduce Facebook documents as business records at trial, Griffith objected that they were inadmissible hearsay because state failed to provide certification or testimony required to admit them under Rule 803(6) (business records exception), or under Rule 902(11) (self-authentication if proper certification provided); court held state failed to satisfy requirement that statement was made at or near time by someone with first-hand knowledge).

ARTICLE 9. AUTHENTICATION AND IDENTIFICATION

Rule 901(a). Authenticating and Identifying Evidence — General provision.

901.a.010 For the matter in question to be admissible in evidence, the proponent need only present sufficient evidence from which the trier-of-fact could conclude the matter in question is what the proponent claims it to be; whether the matter in question is in fact what the proponent claims and whether it is connected to the litigation is a question of weight and not admissibility, and is for the trier-of-fact.

State v. Griffith, 247 Ariz. 361, 449 P.3d 353, ¶¶ 11–13 (Ct. App. 2019) (victims home was burglarized and three Apple iPads were missing; based on information victims acquired from Apple, police subpoenaed Apple and obtained information about subject named Brandon Griffith; using police database, officers found a Brandon Griffith with same address as one Apple provided; police then interviewed Griffith, who explained others frequently brought him computer devices asking him to restore devices to their factory settings, and admitted performing this service even when he suspected devices were stolen; Griffith recalled suspect in police's burglary investigation had once brought him several devices to reset, including three iPads; Griffith said he communicated with suspect through Facebook, prompting police to obtain search warrant for Griffith's Facebook account; in response, Facebook produced, message containing photograph sent from Griffith's account and log of account's search history; when state sought to introduce Facebook documents as business records at trial, Griffith objected that they were inadmissible hearsay because state failed to provide certification or testimony required to admit them under Rule 803(6) (business records exception), or under Rule 902(11) (self-authentication if proper certification provided); court held Facebook records custodian would not be able to provide information from which the jurors could conclude Griffith authored message).

State v. Griffith, 247 Ariz. 361, 449 P.3d 353, ¶¶ 14–16 (Ct. App. 2019) (when state sought to introduce Facebook documents as business records at trial, Griffith objected that they were inadmissible hearsay because state failed to provide certification or testimony required to admit them under Rule 803(6) (business records exception), or under Rule 902(11) (self-authentication if proper certification provided); court noted Facebook account from which the message was sent uses defendant's name; detective who obtained records testified she requested them by uploading search warrant through specific webpage solely for law enforcement, and Facebook delivered the records to her through that same page; defendant stated he performed factory reset on only one of three iPads he had been given by burglary suspect; consistent with that statement, Apple records show new registry in defendant's name for only one iPad; photograph of that particular iPad was attached to message sent from defendant's Facebook account; court held this was sufficient evidence from which jurors could reasonably find that Griffith himself sent message, thus trial court did not abuse its discretion in admitting message).

State v. Griffith, 247 Ariz. 361, 449 P.3d 353, ¶¶ 17–19 (Ct. App. 2019) (defendant contended trial court erred in admitting log showing searches made by Griffith's Facebook account; because there was sufficient evidence from which jurors could find defendant authored those searches, trial court did not abuse discretion in admitting that evidence).

Rule 902. Evidence That Is Self-Authenticating.

Rule 902(11) — Certified Domestic Records of a Regularly Conducted Activity.

902.11.010 This section allows for the admission of the original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)–(C), as shown by a certification of the custodian or another qualified person that complies with a statute or a rule prescribed by the Supreme Court.

State v. Griffith, 247 Ariz. 361, 449 P.3d 353, ¶¶ 11–13 (Ct. App. 2019) (victims found home had been burglarized and three Apple iPads were missing; based on information victims acquired from Apple, police subpoenaed Apple and obtained information about subject named Brandon Griffith; police interviewed Griffith, who explained that others frequently brought him computer devices asking him to restore them to their factory settings, and admitted doing so even when he suspected devices were stolen; Griffith recalled that suspect in police's burglary investigation had once brought him several devices to reset, including three iPads; Griffith said he communicated with suspect through Facebook, prompting police to obtain search warrant for Griffith's Facebook account; in response, Facebook produced, among other things, message containing photograph sent from Griffith's account and log of account's search history; when state sought to introduce Facebook documents as business records at trial, Griffith objected because state failed to provide certification or testimony required under Rule 803(6) (business records exception), or Rule 902(11) (self-authentication if proper certification provided); court held Facebook records custodian would not be able to show that defendant authored message).

ARTICLE III. RIGHTS OF PARTIES.

RULE 6. ATTORNEYS, APPOINTMENT OF COUNSEL.

Rule 6.1(b) Rights to counsel; right to a court-appointed attorney; waiver of the right to counsel—Right to a court appointed attorney.

6.1.b.030 Single allegations of lost confidence, disagreements over defense strategies, or other conflicts less than irreconcilable do not necessarily require the appointment of new counsel; rather, to constitute a colorable claim, a defendant's allegations must go beyond personality conflicts or disagreements; the defendant instead bears the burden to demonstrate facts sufficient to support a belief that an irreconcilable conflict exists warranting the appointment of new counsel in order to avoid the clear prospect of an unfair trial.

State v. Johnson, 247 Ariz. 166, 447 P.3d 783, ¶¶ 178–83 (2019) (court held defendant did not met his burden to show that irreconcilable conflict existed; defendant's disagreements were minor, and his attorneys regularly contacted him; although defense counsel noted there were some frustrations, counsel advised trial court they could continue to work together; court held trial court was in the best position to consider evidence of conflict and found it insufficient, and agreed with trial court).

6.1.b.060 In order for the trial court to exercise proper discretion in determining whether to substitute counsel, the trial court should consider several factors, including the following: (1) whether new counsel would be confronted with the same conflict; (2) the timing of the defendant's request; (3) the inconvenience to witnesses; (4) the time period already elapsed between the alleged offense and trial; (5) the proclivity of the defendant to change counsel; (6) the quality of counsel; (7) whether an irreconcilable conflict exists between counsel and the accused; (8) the reasons for the defendant's request; and (9) the disruption and delay expected in the proceedings if the request were to be granted.

State v. Johnson, 247 Ariz. 166, 447 P.3d 783, ¶¶ 184–87 (2019) (defendant contended trial court erred by not considering all above factors; court stated that, although trial court could have engaged in more searching exploration of defendant's claims and counsel's responses, trial court did not abuse its discretion because it sufficiently inquired into purported breakdown).

State v. Champagne, 247 Ariz. 116, 447 P.3d 297, ¶¶ 14–21 (2019) (trial court determined (1) there was no irreconcilable breakdown in communication between defendant and his counsel, (2) new counsel would likely be confronted with same conflict, (3) granting defendant's request would delay trial, which could ultimately inconvenience witnesses, (4) explicitly noted quality of counsel, and (5) considered timing of defendant's motion and time that had already elapsed since alleged offense; trial court therefore did not abuse discretion in denying request for change of counsel; although fact that defendant had not previously requested change of counsel weighed in his favor, that does not necessitate finding he was entitled to change counsel when other factors weighed in support of denying his request).

Rule 6.1(c) Rights to counsel; right to a court-appointed attorney; waiver of the right to counsel—Waiver of the right to counsel.

6.1.c.150 In order to determine whether the defendant has made a knowing and intelligent waiver of the right to conflict free counsel, the trial court should use the same standard set forth when a defendant seeks to waive counsel altogether.

State v. Duffy, 247 Ariz. 537, 453 P.3d 816, ¶¶ 16–21 (Ct. App. 2019) (defendant and codefendant were represented at trial by same retained counsel; prosecutor warned trial court repeatedly this constituted conflict of interest; defendants' attorney insisted there was "no cognizable issue for this case" because both defendants were identically situated, had "essentially . . . a common defense agreement," and had signed waiver after being adequately advised of their rights; trial court accepted avowal of counsel; court concluded trial court did not make adequate inquiry to determine if defendant understood dangers of joint representation and had made knowing and intelligent waiver, and further found joint representation prejudiced defendant, and thus vacated conviction).

RULE 7. RELEASE.

Rule 7.2(b) Right to release—Before conviction; non-bailable offenses.

7.2.b.010 When the state obtains custody of a defendant pursuant to a writ of habeas corpus *ad prosequendun* and the writ provides the state will keep the defendant in custody for all court proceedings and will return the defendant to the original detaining authority within a reasonable time once final judicial disposition is completed, the court has no jurisdiction to release the defendant on bail.

State v. Kaipio (Espinoz-Sanudo), 246 Ariz. 134, 435 P.3d 1040, ¶¶ 9–15 (Ct. App. 2019) (state arrested defendant, defendant posted bond and was released; ICE then took defendant into custody; state obtained writ of habeas corpus *ad prosequendun,* which provided state would keep defendant in custody for all court proceedings and would return defendant to ICE within a reasonable time once final judicial disposition was completed; trial court erred in granting defendant's subsequent request to be released on bond).

ARTICLE IV. PRETRIAL PROCEDURES.

RULE 13. INDICTMENT AND INFORMATION.

Rule 13.1(e) Definitions and construction—Necessarily included offenses.

13.1.e.120 If the verdict form includes both the charge and a lesser-included offense, if the jurors indicate they have either found the defendant not guilty of the greater charge or they are unable to agree on the greater charge, but guilty of the lesser-included offense, if the conviction is later reversed, the defendant may not be retried for the greater offense.

State v. Martin, 247 Ariz. 101, 446 P.3d 806, ¶¶ 8–24 (2019) (defendant was tried for first-degree murder, but jurors, after marking on verdict form they were "Unable to agree" on first-degree murder, convicted him of lesser-included offense of second-degree murder; following successful appeal, defendant was retried and convicted of first-degree murder; court held double jeopardy barred defendant's second trial for first-degree murder).

Rule 13.5(b) Amending charges; defects in the charging document—Altering the charges; amending to conform to the evidence.

13.5.b.060 The charging document will not be deemed amended to conform to the evidence if it violates the defendant's due process rights, which are (1) that the defendant is put on notice of the charges and has ample opportunity to prepare and defend against them, and (2) that the resolution of the amended charge provides a double jeopardy defense to any subsequent prosecution on the original charge.

State v. Murray (Easton), 247 Ariz. 447, 451 P.3d 803, ¶¶ 7–9 (Ct. App. 2019) (defendant contended that, while indictment alleged he committed aggravated assault with firearm, state improperly presented additional evidence and argument that he used taser in assault, qualifying as use of "deadly weapon or dangerous instrument" under aggravated assault statute, for which he was not charged or given notice; court noted indictment charged assault with firearm, that evidence of taser was admissible as part and parcel of overall altercation, and that prosecutor argued defendant used firearm and never argued taser was deadly weapon or dangerous instrument, thus there was "no reason to believe Murray was convicted for anything other than the offense alleged in the indictment—aggravated assault using a firearm").

RULE 15. DISCOVERY.

15.010 A defendant's due process right to a fair trial does not create a right to discovery any greater than those rights created by Rule 15.1 of the Arizona Rules of Criminal Procedure and *Brady v. Maryland.*

R.S. v. Thompson (Vanders), 247 Ariz. 575, 454 P.3d 1010, ¶¶ 9–28 (Ct. App. 2019) (court stated there is no general constitutional right to discovery in a criminal case, and *Brady* did not create one; court held physician-patient privilege does not yield to request of criminal defendant for information merely because that information may be helpful to defendant's defense, and that, to be entitled to *in camera* review of privileged records as matter of due process, defendant must establish substantial probability that protected records contain information critical to element of charge or defense, or that their unavailability would result in fundamentally unfair trial; court held that, because defendant did not establish this substantial probability, trial court erred by granting *in camera* review of victim's privileged records).

Rule 15.2(g) The defendant's disclosure—Disclosure by court order.

15.2.g.010 This rule requires disclosure only upon a showing that the state could not obtain the material without undue hardship.

State v. Johnson, 247 Ariz. 166, 447 P.3d 783, ¶¶ 93–98 (2019) (because state was entitled to out-of-state records and school records, and because entities with those records would not provide them without court order or signed release, trial court did not err in ordering defendant to provide signed releases).

Rule 15.2(h) The defendant's disclosure—Additional disclosure in a capital case.

15.2.h.010 Rule 15.2(h) statements do not meet the work product exception to disclosure under Rule 15.4(b)(1) because they are not theories, opinions, or conclusions of the parties or their agents.

State v. Johnson, 247 Ariz. 166, 447 P.3d 783, ¶¶ 82–91 (2019) (defendant contended trial court erred by ordering disclosure of his attorneys' notes; in his notice of mitigation witnesses, defendant included summaries of witness statements; state argued summaries did not comply with Rule 15.2(h) and asked trial court to order defendant to turn over all written witness statements, not just summaries; court held that statements being sought were not protected by privilege, nor did court allow "unfettered scrutiny" of the notes, rather, it properly ordered production by *in camera* review to allow defendant to redact any "opinions, theories, or conclusions" that defense notes included; thus trial court did not abuse discretion).

ARTICLE V. PLEAS OF GUILTY AND NO CONTEST.

RULE 17. PLEAS OF GUILTY AND NO CONTEST.

17.0.019 The invited-error doctrine may preclude relief after the acceptance of a plea

State v. Robertson, 246 Ariz. 438, 440 P.3d 401, ¶¶ 10–16 (Ct. App. 2019) (defendant was charged with first-degree murder and intentional child abuse; defendant pled guilty to manslaughter and reckless child abuse pursuant to plea agreement that provided she would receive prison term for manslaughter and consecutive period of probation for child abuse, but that she could be sentenced to prison if she violated probation; after completing prison sentence and being placed on probation, defendant violated probation and was sentenced to prison; defendant for first time argued that both counts involved same victim, thus § 13–116 precluded second prison sentence; court held defendant invited error and thus could not raise § 13–116 challenge to sentence imposed following probation revocation). **(rev. pending)**

Rule 17.2(b) Advise of rights and of the consequences of a guilty or no contest plea—Immigrant advisement.

17.2.b.010 If a defendant's guilty plea will result in mandatory deportation, failure to so advise will mean counsel's representation fell below an objective standard of reasonableness, and if the defendant establishes he or she would not have entered into plea if known of mandatory deportation, defendant will have established prejudice.

State v. Nunez-Diaz, 247 Ariz. 1, 444 P.3d 250, ¶¶ 10–16 (2019) (defendant was undocumented immigrant who entered into guilty plea that resulted in his mandatory deportation; court held attorney provided ineffective assistance of counsel in failing to advise defendant of that result of his plea; court held record showed defendant would not have entered into plea if he had known he faced mandatory deportation, thus defendant established prejudice).

Rule 17.4(a)(2) Plea negotiations and agreements—Judicial participation.

17.4.a.2.010 If a trial judge, in violation of Rule 17.4(a)(2), participates in settlement discussions between a defendant and the State without the parties' consent, the judge errs by thereafter presiding over that defendant's trial and sentencing, and such error is fundamental if the totality of the circumstances raises a presumption of judicial vindictiveness.

State v. Mendoza, 248 Ariz. 6, 455 P.3d 705, ¶¶ 8–18 (Ct. App. 2019) (defendant was charged with DUI with two historical felony convictions; plea agreement provided sentencing range of 6 to 15 years; during status conference, defendant "wanted to discuss the case with the Court"; judge gave opinion that defendant most likely would receive sentence at high end of sentencing range if he went to trial; defendant rejected plea and went to trial before that judge; court held judge erred by presiding at defendant's trial).

ARTICLE VI. TRIAL.

RULE 18. TRIAL BY JURY; WAIVER; SELECTION AND PREPARATION OF JURORS.

Rule 18.4(c) Challenges—Peremptory challenges.

18.4.c.130 Under *Batson,* once a party has made out a *prima facie* case of purposeful discrimination, the burden shifts to the other party to show a nondiscriminatory explanation for the strike, which need not rise to the level justifying exercise of a challenge for cause.

State v. Gentry, 247 Ariz. 381, 449 P.3d 707, ¶¶ 8–12 (Ct. App. 2019) (state struck only remaining African-American on jury panel; prosecutor gave following reasons for strike: (1) prospective juror's family members and son's father had prior felony convictions; (2) she had blended family, including step-children and biological children in her household; and (3) her husband served in military and worked at bank; because these same factors applied to defendant, court concluded these were race-neutral reasons).

RULE 19. TRIAL.

Rule 19.1(mmt) Conduct of trial—Motion for mistrial.

19.1.mmt.090 The prosecutor is permitted to make comments that are a fair rebuttal to comments made by the defendant's attorney.

State v. Dansdill, 246 Ariz. 593, 443 P.3d 990, ¶¶ 41–51 (Ct. App. 2019) (defendant did not testify; in final argument, defendant's attorney referred to evidence of calls from defendant's cell phone and argued there was no information about where those calls went and no witnesses that could have testified about content of the calls; in rebuttal, prosecutor responded that, although "[t]here is never a point in the trial where the defendant has to present any evidence or put on any evidence," it is also the case that "[h]e can, he can present evidence"; prosecutor further said neither side is required to present evidence, but stated "if any one of those people exonerated him, you could bet your bippy you would have been hearing about them from the witness stand"; court said prosecution was entitled to rebut defense counsel's closing arguments about missing evidence and witnesses and quality of proof; court noted prosecutor's argument, in isolation, could have directed jurors' attention to defendant's failure to testify, but that defendant's own argument had already exposed jurors to that inference; court nonetheless "exhort[ed] prosecutors to exhibit special care where fundamental rights are at play and when proper argument, as here, must necessarily skirt improper topics").

19.1.mmt.100 To determine whether the **prosecutor's** remarks or actions were so objectionable as to require a mistrial, the trial court must consider (1) whether the remarks or actions call to the attention of the jurors matters that they would not be justified in considering, and (2) the probability that the jurors, under the circumstances of the case, were influenced; further, the defendant must show the offending statements were so pronounced and persistent that they permeated the entire atmosphere of the trial and so infected the trial with unfairness that they made the resulting conviction a denial of due process.

State v. Murray (Claudius), 247 Ariz. 583, 454 P.3d 1018, ¶¶ 41–46 (Ct. App. 2019) (defendant contended prosecutor misrepresented reasonable doubt standard by arguing that belief that defendant "might be guilty" constituted belief in guilt beyond reasonable doubt; court noted jurors must be "firmly convinced of defendant's guilt" to find defendant guilty, but held that, in light of trial court's instructions, prosecutor's erroneous remarks resulted in fundamental error requiring reversal).

State v. Murray (Easton), 247 Ariz. 447, 451 P.3d 803, ¶¶ 32–33 (Ct. App. 2019) (defendant contended prosecutor misrepresented reasonable doubt standard by arguing that belief that defendant "might be guilty" constituted belief in guilt beyond reasonable doubt; court noted jurors must be "firmly convinced of defendant's guilt" to find defendant guilty, but held that, in light of prosecutor's other proper arguments and trial court's instructions, it did not believe prosecutor's erroneous remarks "so infected the trial with unfairness as to make the resulting conviction a denial of due process").

State v. Murray (Claudius), 247 Ariz. 583, 454 P.3d 1018, ¶¶ 10–12 (Ct. App. 2019) (defendant contended prosecutor made inappropriate and irrelevant references trial to defendant's nationality by mentioning that defendants were from Jamaica; court noted neighbor who witnessed assault heard conversation in unfamiliar language, thus evidence that defendant and his brother were from Jamaica (and spoke in Jamaican Patois) was relevant as it tended to show that people that neighbor had heard were defendant and his brother).

State v. Murray (Easton), 247 Ariz. 447, 451 P.3d 803, ¶ 30 (Ct. App. 2019) (defendant contended prosecutor improperly injected defendants' nationality into trial by mentioning in opening statement and twice eliciting from victim fact that defendants were from Jamaica; court noted neighbor who witnessed assault heard conversation in unfamiliar language, thus evidence that defendant and his brother were from Jamaica (and spoke in Jamaican Patois) was relevant, tending to show people that neighbor had heard were defendant and brother).

State v. Dansdill, 246 Ariz. 593, 443 P.3d 990, ¶¶ 32–40 (Ct. App. 2019) (during summation, prosecutor referred to felony murder as "less serious form of murder" and "lesser form of first degree murder," as compared to "the more serious form of premeditated murder"; after defendant objected and reserved his motion, prosecutor again referred to "this lesser form of first degree murder, felony murder"; court acknowledged prosecutor was entitled to argue that state bore no burden to show defendant intended to kill, but noted state failed to explain how remarks about comparative "seriousness" of premediated and felony murder were logically pertinent; court conclude jurors would have understood prosecutor's repeated characterization of felony murder as "less serious" than premeditated murder as reference to consequences of conviction, and in context of criminal trial, those comments could mean little else, thus trial court erred when it failed to sustain defense objection to those remarks).

RULE 21. INSTRUCTIONS.

Willits instruction.

21.1.815 A defendant is entitled to a *Willits* instruction if the defendant shows that (1) the state failed to preserve material evidence that was accessible, (2) the evidence might have exonerated the defendant, and (3) as a result, the defendant suffered prejudice.

State v. Hernandez, 246 Ariz. 543, 443 P.3d 33, ¶¶ 9–12 (Ct. App. 2019) (officer saw car run a stop sign, which caused him to swerve to avoid collision; while trying to avoid collision, officer "locked eyes" with driver of car for 1 or 2 seconds; officer later testified driver's face was "a face that [he] would never forget"; officer attempted traffic stop, but car did not stop, which resulted in pursuit that eventually ended in parking lot, where driver and two other occupants fled on foot; officer saw driver's profile as he fled; defendant claimed he was not driver of vehicle; court concluded defendant met his burden of showing that fingerprints and DNA evidence from car, if preserved, would have been potentially helpful to him, thus he was entitled to *Willits* instruction based on state's failure to preserve that evidence, thus trial court erred by denying Defendant's requested *Willits* instruction). **(rev. pending)**

21.1.820 To be entitled to a *Willits* instruction, the defendant must show that the evidence possessed exculpatory value that was apparent before it was destroyed.

State v. Fuentes, 247 Ariz. 516, 452 P.3d 746, ¶¶ 30–35 (Ct. App. 2019) (because shoe print did not appear to have exculpatory value and police did not know at that time defendant would claim self-defense and that shoe print evidence may support that defense, failure of police to photograph shoe print did not entitle defendant to *Willits* instruction).

RULE 22. DELIBERATIONS.

Rule 22.4 Assisting jurors at impasse.

22.4.010 If jurors have come to impasse, trial court has discretion to do various things, including giving additional instructions, clarifying earlier instructions, directing attorneys to make additional arguments, and reopening the evidence for limited purposes.

State v. Champagne, 247 Ariz. 116, 447 P.3d 297, ¶¶ 62–68 (2019) (defendant contended trial court erred in permitting state to make additional closing argument after jurors interrupted deliberations to ask question; court held trial court was justified in ordering supplemental argument and permitting each side 5 minutes to respond to jurors' question; court emphasized that trial court should not order supplemental argument after jurors retire for deliberations unless court concludes additional argument is only way to respond adequately to jurors' request for additional instruction without inappropriately commenting on evidence or prejudicing parties' rights).

ARTICLE VII. POST-VERDICT PROCEEDINGS.

RULE 24. POST-TRIAL MOTIONS.

Rule 24.1(c)(3) Motion for new trial—Grounds—Juror misconduct.

24.1.c.330 When a juror has considered extrinsic evidence, the trial court must grant a new trial unless it finds beyond a reasonable doubt that such evidence did not affect the verdict; juror misconduct warrants a new trial if the defendant shows actual prejudice or if prejudice may be fairly presumed from the facts; once the defendant shows that the jurors received and considered extrinsic evidence, prejudice must be presumed and a new trial granted unless the state proves beyond a reasonable doubt that the extrinsic evidence did not taint the verdict.

State v. Rojas, 247 Ariz. 399, 449 P.3d 1129, ¶¶ 12–21 (Ct. App. 2019) (defendant was charged with sexual conduct with 5-year-old girl; courtroom observer requested permission to record video of proceedings on tablet computer for posting on his social media page; over defendant's objection, trial court granted request, admonishing observer that he could not publish images of jury in which jurors were identifiable; 2 days later, juror received text messages from friend, asking if juror was serving in case involving "a guy by the last name of Rojas and something about a daycare and a 5-year-old"; after juror confirmed she was juror, friend revealed she had seen video posted on social media of defendant testifying at trial; video did not show jurors' faces but did show jurors in jury box; friend claimed she had not read story about case but said it was "disgusting" and told juror how to locate social media post; juror then gave that information to other jurors; trial court questioned jurors, who said information would not affect their verdict; court held this amounted to jurors receiving information that they were prohibited from receiving, thus trial court did not abuse discretion in granting motion for new trial).

ARTICLE VIII. APPEAL AND OTHER POST-CONVICTION RELIEF.

RULE 31. APPEAL FROM SUPERIOR COURT.

Rule 31.10(a) Contends of briefs—Appellant's opening brief—Appellate review.

31.10.a.ar.150 Although a defendant may not present a claim of ineffective assistance of counsel on direct appeal and instead must use a petition for post-conviction relief, a defendant may raise on direct appeal a claim the trial court failed to discharge its duty to protect the defendant's constitutional right to conflict-free counsel.

State v. Duffy, 247 Ariz. 537, 453 P.3d 816, ¶¶ 8–15 (Ct. App. 2019) (defendant and codefendant were represented at trial by same retained counsel; prosecutor warned trial court repeatedly this constituted conflict of interest; defendants' attorney insisted there was "no cognizable issue for this case" because both defendants were identically situated, had "essentially . . . a common defense agreement," and had signed waiver after being adequately advised of their rights; trial court accepted avowal of counsel; court concluded trial court did not make adequate inquiry to determine if defendant understood dangers of joint representation and had made knowing and intelligent waiver, and further found joint representation prejudiced defendant, and thus vacated conviction).

RULE 32. OTHER POST-CONVICTION RELIEF.

Rule 32.1(a) Scope of remedy—Constitutional violation.

32.1.a.020 Although a defendant may not present a claim of ineffective assistance of counsel on direct appeal and instead must use a petition for post-conviction relief, a defendant may raise on direct appeal a claim the trial court failed to discharge its duty to protect the defendant's constitutional right to conflict-free counsel.

State v. Duffy, 247 Ariz. 537, 453 P.3d 816, ¶¶ 8–15 (Ct. App. 2019) (defendant and codefendant were represented at trial by same retained counsel; prosecutor warned trial court repeatedly this constituted conflict of interest; defendants' attorney insisted there was "no cognizable issue for this case" because both defendants were identically situated, had "essentially . . . a common defense agreement," and had signed waiver after being adequately advised of their rights; trial court accepted avowal of counsel; court concluded trial court did not make adequate inquiry to determine if defendant understood dangers of joint representation and had made knowing and intelligent waiver, and further found joint representation prejudiced defendant, and thus vacated conviction).

12–116 Time payment fee.

.030 The statute requires a time payment fee for a person ordered to pay a penalty, fine, or sanction, thus it is not proper to order a time payment fee for something other than a penalty, fine, or sanction.

State v. Dustin, 247 Ariz. 389, 449 P.3d 715, ¶¶ 3–12 (Ct. App. 2019) (defendant was convicted of unlawful flight from pursuing law enforcement vehicle; trial court did not impose fine, but ordered defendant to pay: time payment fee, $20; public defender assessment fee, $25; probation assessment (formerly known as probation surcharge), $20; penalty assessment, $13; and victim rights enforcement assessment, $2; court held imposition of public defender assessment would not support time payment fee, but imposition of probation assessment would).

13–106(A) Death of convicted defendant; dismissal of appellate and postconviction proceedings—Effect on pending appeal.

.010 Subsection (A), which provides that, on a convicted defendant's death, the court shall dismiss any pending appeal, is procedural law and is not supported by the Victim's Bill of Rights, and is therefore unconstitutional.

State v. Reed, 248 Ariz. 72, 445 P.3d 453, ¶¶ 19, 31–33 (2020) (court of appeals had previously affirmed defendant's conviction on appeal; state filed motion requesting restitution, which trial court ordered; defendant appealed restitution order, but died while appeal was pending; court stated that, for a pending appeal of a restitution order upon a convicted defendant's death: (1) A court should only decide issues that (a) are of statewide interest, (b) remain a controversy, or (c) are capable of repetition so that court guidance would assist parties and the courts in future cases; (2) the court may permit a deceased defendant's estate or other interested party to intervene in the appeal; and (3) a court must dismiss an appeal if (a) the defendant dies before the matter has been briefed, (b) defendant's counsel does not submit briefing, and (c) neither the defendant's estate nor an interested party moves to intervene in the appeal; court left for another day the determination of the procedure to be followed when a defendant dies pending an appeal of the conviction or sentence).

.020 Subsection (A), which provides that, on a convicted defendant's death, the court shall dismiss any pending post-conviction proceeding, is procedural law, but is consistent with the procedure followed by the courts, and is therefore constitutional.

State v. Reed, 248 Ariz. 72, 445 P.3d 453, ¶ 19 (2020) (court of appeals had previously affirmed defendant's conviction on appeal; state filed motion requesting restitution, which trial court ordered; defendant appealed restitution order, but died while appeal was pending; because this matter did not involve post-conviction proceeding, court's statement was not essential to resolution of case).

13–106(B) Death of convicted defendant; dismissal of appellate and postconviction proceedings—Effect on conviction, sentence, and restitution.

.010 Subsection (B), which provides that a convicted defendant's death does not abate the defendant's criminal conviction, sentence of imprisonment, restitution, fine, or assessment imposed by the sentencing court, is substantive law that is within the legislature's authority to enact, and is therefore constitutional.

State v. Reed, 248 Ariz. 72, 445 P.3d 453, ¶ 19 (2020) (court of appeals had previously affirmed defendant's conviction on appeal; state filed motion requesting restitution, which trial court ordered; defendant appealed restitution order, but died while appeal was pending; court remanded to court of appeals for a decision on merits of appeal of restitution order).

13–116 Double punishment.

.200 The invited-error doctrine may preclude relief under this section.

State v. Robertson, 246 Ariz. 438, 440 P.3d 401, ¶¶ 10–16 (Ct. App. 2019) (defendant was charged with first-degree murder and intentional child abuse; defendant pled guilty to manslaughter and reckless child abuse pursuant to plea agreement that provided she would receive prison term for manslaughter and be placed on consecutive period of probation for child abuse, but that she could be sentenced to prison if she violated probation; after completing prison sentence and being placed on probation, defendant violated probation and was sentenced to prison; defendant for first time argued that both counts involved same victim, thus § 13–116 precluded second prison sentence; court held defendant invited any error and thus could not raise § 13–116 challenge to sentence imposed following probation revocation). **(rev. pending)**

13–203(B) Causal relationship between conduct and result; relationship to mental culpability—Transferred intent.

.030 The transferred intent statute applies when a defendant intended to harm a person, but instead inflicts a similar injury or harm as that intended or contemplated, and this occurs in a manner that the person knows or should know is rendered substantially more probable by such person's conduct.

State v. Fuentes, 247 Ariz. 516, 452 P.3d 746, ¶¶ 43–46 (Ct. App. 2019) (prosecutor argued that, if defendant formulated intent to murder J.P. but shot victim instead, intent to kill J.P. could transfer to victim, rendering his murder premeditated).

13–404 Justification; self-defense.

.050 A defendant is generally not entitled to an instruction that the defendant has no duty to retreat before acting in self-defense.

State v. Fuentes, 247 Ariz. 516, 452 P.3d 746, ¶¶ 39–42 (Ct. App. 2019) (court held other instructions adequately covered this concept; court further stated that jurors may consider possibility of retreat in determining whether defendant was justified in claiming self-defense).

13–407 Justification; use of physical force in defense of premises.

.020 If in defending the premises, the defendant is also defending self or third person and the trial court gives an instruction on defending the premises, if the trial court gives other instructions on defending self or third person, the trial court need not include an instruction on defending self or third person in instruction on defense of premises.

State v. Gentry, 247 Ariz. 381, 449 P.3d 707, ¶¶ 23–27 (Ct. App. 2019) (victim (M.R.) and defendant's step-daughter (Autumn) has son together; as result of altercation, defendant shot and killed victim, and claimed self-defense and defense of third person (Autumn); trial court gave following instructions: (1) self-defense under § 13–404; (2) use of deadly physical force under § 13–405; (3) defense of third person under § 13–406; (4) use of physical force in defense of premises under § 13–407; (5) use of force in crime prevention under § 13–411(A); (6) use of force in defense of residential structure under § 13–418; and (7) presumptions under § 13–419(A) and (B), with the exception listed under § 13–419(C)(2); defendant contended trial court should have added defense of self or third person to defense of premises instruction under § 13–407; court held this was adequately cover by other instructions).

13–411(A) Justification; use of force in crime prevention—Justification.

.090 If the defendant does not object to the instruction given, the defendant will have waived any objection.

State v. Gentry, 247 Ariz. 381, 449 P.3d 707, ¶¶ 28–30 (Ct. App. 2019) (victim (M.R.) and defendant's step-daughter (Autumn) has son together; as result of altercation, defendant shot and killed victim, and claimed self-defense and defense of third person (Autumn); among others, trial court instructed on use of force in crime prevention under § 13–411(A); defendant contended trial court erred in not further instructing on underlying felonies; court noted defendant did not object to trial court's instruction and thus invited any error).

13–419 Presumption, exceptions; definitions.

.020 The presumptions in subsections in § 13–419(A) and (B) do not apply if the person against whom physical force or deadly physical force was threatened or used is the parent or grandparent, or has legal custody or guardianship, of a child or grandchild sought to be removed from the residential structure or occupied vehicle.

State v. Gentry, 247 Ariz. 381, 449 P.3d 707, ¶¶ 31–33 (Ct. App. 2019) (victim (M.R.) and defendant's step-daughter (Autumn) has son together; as result of altercation, defendant shot and killed victim, and claimed self-defense and defense of third person (Autumn); defendant contended trial court erred in instructing jurors on exception listed in § 13–419(C)(2); court noted evidence showed M.R. tried to remove son from premises shortly before shooting, thus evidence supported giving of this instruction).

13–502(A) Insanity test; burden of proof; guilty except insane verdict—Standard.

.030 The Arizona legislature has declined to adopt a defense of diminished capacity, thus a defendant is precluded from maintaining that he or she cannot reflect upon his or her actions (or has a lesser capacity to do so); the defendant may, however, introduce evidence demonstrating an ingrained character trait that rendered it less likely he or she acted with reflection and deliberation.

State v. Malone, 247 Ariz. 29, 444 P.3d 733, ¶¶ 8–21 (2019) (defendant contended his proffered expert testimony about brain damage was not to prove he was incapable of reflecting, but was instead offered to demonstrate brain condition that rendered it less likely that he may have done so; court concluded defendant's proffered evidence was mental disease or defect evidence, and thus was inadmissible either to show defendant's inability to form *mens rea* or a likelihood he failed to do so, and thus could not be used to negate *mens rea*).

13–503 Effect of alcohol or drug use.

.020 Temporary intoxication resulting from the voluntary use of alcohol or illegal drugs is not a defense for any criminal act or required state of mind.

State v. Champagne, 247 Ariz. 116, 447 P.3d 297, ¶¶ 56–60 (2019) (defendant contended trial court erred in giving state's requested instruction that voluntary intoxication is not defense to any criminal act; court held that, because there was extensive testimony at trial that defendant was drinking and high on methamphetamine before murders, without voluntary intoxication instruction, jurors could have rejected defendant's claim of innocence but improperly concluded his voluntary intoxication prevented him from forming necessary intent for criminal liability; thus trial court did not err in giving that instruction).

13–603(C) Authorized disposition of offenders—Restitution.

.010 The trial court should order restitution for losses if the following requirements are satisfied: (1) The loss must be economic; (2) the loss must be one that the victim would not have incurred but for the defendant's criminal offense; and (3) the criminal conduct must directly cause the loss.

State v. Quijada, 246 Ariz. 356, 439 P.3d 815, ¶¶ 40–47 (Ct. App. 2019) (court ordered restitution for cost of home security system; court held trial court did not err by finding expenses associated with home security system directly flowed from lost equanimity caused by defendant's criminal conduct, but that defendant may not be held responsible for costs of maintaining home security system beyond reasonable period necessary to restore victim's equanimity).

.040 The trial court may require the timely assertion of a claim for restitution, and a victim who fails to present supporting evidence by such deadline waives their right to receive restitution.

State v. Quijada, 246 Ariz. 356, 439 P.3d 815, ¶¶ 6–39 (Ct. App. 2019) (defendant pled guilty to trafficking in stolen property, and trial court retained jurisdiction to impose restitution; victim submitted unsworn restitution statement containing items not reported in police report; as proceedings progresses, victim submitted amended restitution statements, each one claiming more items that in previous statements; although trial court attempted to hold restitution hearing, it was unable to do so because victim did not appear, but entered restitution order for $39,969.37; court held entering restitution order without allowing defendant to question victim about items she claimed were stolen deprived defendant of due process).

.150 Although § 13–603(C) is somewhat restrictive in the persons or entities that may receive restitution, the availability of restitution under § 13–804(A) is broad.

State v. Leal, 248 Ariz. 1, 455 P.3d 327, ¶¶ 4–14 (Ct. App. 2019) (court held trial court had discretion to award restitution to the Quechan Indian Tribe, who paid victim's funeral expenses).

13–716 Juvenile offenders sentenced to life imprisonment; parole eligibility.

.020 This section is a remedial statute that affects future events and not a retroactive substantive law because it does not take away a vested right, but rather provided an additional right.

State v. Healer, 246 Ariz. 440, 440 P.3d 404, ¶¶ 5–9 (Ct. App. 2019) (in 1994, at age of 16, defendant robbed and murdered his elderly neighbor; jurors found him guilty, and trial court sentenced him to life imprisonment without possibility of release; court affirmed his convictions and sentences on appeal; defendant sought post-conviction relief, and supreme court held defen-

dant was entitled to be resentenced; trial court resentenced defendant to life imprisonment with the possibility of parole after 25 years; court rejected defendant's claim that § 13–716 was *ex post facto* law).

13–804(A) Restitution for offenses causing economic loss; fine for reimbursement of public monies—Payment to victim.

.010 Although § 13–603(C) is somewhat restrictive in the persons or entities that may receive restitution, the availability of restitution under § 13–804(A) is broad.

State v. Leal, 248 Ariz. 1, 455 P.3d 327, ¶¶ 4–14 (Ct. App. 2019) (court held trial court had discretion to award restitution to Quechan Indian Tribe, who paid victim's funeral expenses).

13–805(C) Jurisdiction—Payment of costs and fees, and restitution if not previously ordered.

.010 This section provides that, at the time the defendant completes any period of probation or any sentence, or at the time the defendant absconds from probation or sentence, the trial court shall enter a criminal restitution order in favor of the state for any unpaid fees and costs, and to any person to whom the defendant still owes restitution, thus the trial court does not have the authority to enter a criminal restitution order (CRO) for fees and costs before that time.

State v. Dustin, 247 Ariz. 389, 449 P.3d 715, ¶¶ 13 (Ct. App. 2019) (defendant was convicted of unlawful flight from pursuing law enforcement vehicle and sentenced to prison; trial court ordered defendant to pay time payment fee, public defender assessment fee, probation assessment (formerly known as probation surcharge), penalty assessment, and victim rights enforcement assessment; because defendant had not yet completed prison sentence, trial court erred in entering criminal restitution order).

13–1004(A) Facilitation—Elements.

.040 If it is possible to commit the charged offense without committing facilitation, a defendant is not entitled to a facilitation instruction just because the state seeks conviction on an accomplice liability theory; if the person cannot commit the charged offense without an accomplice, the person is entitled to a facilitation instruction.

State v. Burch, 247 Ariz. 376, 449 P.3d 368, ¶¶ 4–11 (Ct. App. 2019) (defendant was charged under accomplice theory with burglary, kidnapping, armed robbery, aggravated robbery, and aggravated assault; because person could commit burglary, kidnapping, armed robbery, and aggravated assault without committing facilitation, defendant was not entitled to facilitation instruction on those counts; because person cannot commit aggravated robbery without accomplice; defendant would have been entitled to facilitation instruction for that count; because jurors found defendant guilty armed robbery, any error was harmless).

13–1801(A)(13) Definitions (Theft)—Property of another.

.010 "Property of another" means property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe, including property in which the defendant also has an interest.

State v. Dansdill, 246 Ariz. 593, 443 P.3d 990, ¶¶ 18–26 (Ct. App. 2019) (defendant contended he attempted to use force only to regain $300 that victim indisputably owed him; court held that, unless defendant can trace ownership to specific coins and bills in possession of debtor, debtor

is owner of money in debtor's possession, and intent to steal is present when defendant at gun point or by force secures specific money that does not belong to defendant in order to apply it by such self-help to debt owed, thus state presented sufficient evidence to support conviction).

13–1805(A)(5) Shoplifting—By concealment.

.020 In order to commit shoplifting by concealment, there is no requirement that the suspect pass the point of sale.

State v. Morris, 246 Ariz. 154, 435 P.3d 1060, ¶¶ 14–18 (Ct. App. 2019) (defendant placed his backpack in shopping cart; while monitoring surveillance video, loss-prevention employee saw defendant select pair of sunglasses from display, cut off and discard price tag, and put them on; employee saw defendant select package of condoms and energy drink and put them in his shopping cart on top of his backpack; as defendant moved through store, he was out of view for about 80 seconds, and when he come into view, condoms and energy drink were no longer visible; defendant selected several other items and went to self-checkout; defendant attempted to pay for other items, but not sunglasses, condoms, or energy drink; while defendant was still at register, police officers approached him and arrested him for shoplifting based on his failure to pay for sunglasses and concealment of items in backpack; court held there is no requirement that suspect pass point of sale before committing shoplifting by concealment, and that crime is complete at time of concealment).

13–1901(3) Definitions (Robbery)—Property of another.

.010 "Property of another" means property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe, including property in which the defendant also has an interest.

State v. Dansdill, 246 Ariz. 593, 443 P.3d 990, ¶¶ 18–26 (Ct. App. 2019) (defendant contended he attempted to use force only to regain $300 that victim indisputably owed him; court held that, unless defendant can trace ownership to specific coins and bills in possession of debtor, debtor is owner of money in debtor's possession, and intent to steal is present when defendant at gun point or by force secures specific money that does not belong to defendant in order to apply it by such self-help to debt owed, thus state presented sufficient evidence to support conviction).

13–2321(A)(1) Participating in or assisting a criminal street gang. (Organizing, managing, directing, supervising, or financing.)

.010 Each verb in this subsection implies an interaction between the person doing the organizing, managing, directing, financing, or supervising, and a criminal street gang.

State v. Hernandez, 246 Ariz. 407, 439 P.3d 1188, ¶¶ 7–9 (Ct. App. 2019) (defendant's incoming and outgoing mail was subject to order requiring corrections officer to scan each piece of mail before it could be sent to post office or delivered to defendant; defendant attempted to mail two envelopes labeled "legal mail," but officer recognized addressees as recipients of nonlegal mail defendant had previously sent; after approval from supervisor, officer opened and inspected envelopes; based on content of letters, defendant was convicted of three counts of participating in criminal street gang; because letters set forth defendant's past behavior, evidence supported conviction of completed participating in or assisting criminal street gang).

13–2321(A)(2) Participating in or assisting a criminal street gang. (Inciting or inducing)

.010 "Inciting" or "inducing" individuals to engage in violence on behalf of a criminal street gang contemplates, at a minimum, some means of communication between the defendant and intended recipient, and thus that the defendant interacted in some way with the criminal street gang.

State v. Hernandez, 246 Ariz. 407, 439 P.3d 1188, ¶¶ 7–10 (Ct. App. 2019) (defendant's incoming and outgoing mail was subject to order requiring corrections officer to scan each piece of mail before it could be sent to post office or delivered to defendant; defendant attempted to mail two envelopes labeled "legal mail," but officer recognized addressees as recipients of nonlegal mail defendant had previously sent; after approval from supervisor, officer opened and inspected envelopes; based on content of letters, defendant was convicted of three counts of participating in criminal street gang; because letters never reached intended recipients, defendant could only be convicted of attempted participating in or assisting criminal street gang).

13–2321(A)(3) Participating in or assisting a criminal street gang. (Furnishing advice or direction.)

.010 Furnishing advice or direction" to a criminal street gang requires the provision of "advice" or "direction" by a completed communication.

State v. Hernandez, 246 Ariz. 407, 439 P.3d 1188, ¶¶ 7–11 (Ct. App. 2019) (defendant's incoming and outgoing mail was subject to order requiring corrections officer to scan each piece of mail before it could be sent to post office or delivered to defendant; defendant attempted to mail two envelopes labeled "legal mail," but officer recognized addressees as recipients of nonlegal mail defendant had previously sent; after approval from supervisor, officer opened and inspected envelopes; based on content of letters, defendant was convicted of three counts of participating in criminal street gang; because letters never reached intended recipients, defendant could only be convicted of attempted participating in or assisting criminal street gang).

13–3407(H) Possession, use, administration, acquisition, sale, manufacture or transportation of dangerous drugs—Amount of fine.

.010 The language in subsection (H) allowing the court to determine the value of the dangerous drugs for the purposes of increasing the mandatory minimum fine is unconstitutional; that language may be severed without disturbing the legislative intent of the statute.

State v. Angulo-Chavez, 247 Ariz. 255, 448 P.3d 296, ¶¶ 11–17 (Ct. App. 2019) (officer stopped defendant for speeding and eventually searched his vehicle, finding 18 pounds of methamphetamine hidden in sealed packages behind panel in trunk; trial court imposed fine of $120,000; court noted witness testified value of methamphetamine was between $40,000 and $60,000, and that defendant did not dispute that value; court held defendant was not prejudiced).

13–3967(E). Release on bailable offense before trial—Person charged with violation of Chapter 14 or Chapter 35.1.

.020 Counties are not authorized to shift the costs of pretrial electronic monitoring to a defendant.

Hiskett v. Lambert, 247 Ariz. 432, 451 P.3d 408, ¶¶ 14–16 (Ct. App. 2019) (court held superior court lacked statutory authority to order defendant to bear cost of electronic location monitoring during pretrial release, which amounted to $150 down payment and $400 per month).

.030 The phrase "where available" in subsection (E)(1) encompasses actual availability of service as well as the financial ability of the county to pay costs of the electronic location monitoring.

Hiskett v. Lambert, 247 Ariz. 432, 451 P.3d 408, ¶¶ 20–21 (Ct. App. 2019) (court remanded for determination whether county was able to bear expense of electronic monitoring).

13–4518 Screening; sexually violent person; appointment of competent professional.

.010 If the county attorney request that a defendant be screened to determine if the defendant may be a sexually violent person, and (1) the report concludes there is no substantial probability that the defendant will regain competency within 21 months after the date of the original finding of incompetency, and (2) the defendant is charged with or has ever been convicted of or found guilty except insane for a sexually violent offense as defined in § 36–3701, the trial court must grant county attorney's request.

Garcia v. Butler, 247 Ariz. 366, 449 P.3d 358, ¶¶ 6–15 (Ct. App. 2019) (defendant was charged with sexual conduct with minor under age of 15; after competency proceedings, trial court determined defendant was incompetent to stand trial and could not be restored to competency within time lines required by Arizona law; defendant conceded requirements of statute had been met; court rejected defendant's contention that trial court had discretion whether to order screening, and instead held screening was mandatory).

22–301(C) Criminal proceedings in justice courts—Jurisdiction of criminal actions—Commission of the offense.

.010 An offense is committed within the precinct of a justice court if (1) conduct constituting any element of the offense or (2) a result of such conduct occurs within the precinct.

Lay v. Nelson, 246 Ariz. 173, 436 P.3d 496, ¶¶ 14–31 (Ct. App. 2019) (defendant charged with harassment based on text messages he sent woman with whom he had been in a relationship, and threatening or intimidating based on evidence he threatened to kill woman's current significant other; although state presented no evidence showing either where defendant was when he sent messages or where victims were when they received them, evidence showed victim lived within precinct and woman's significant other went to her house after learning of threats; court thus concluded results of defendant's conduct occurred within precinct).

36–2802(D) Arizona Medical Marijuana Act; Limitations—Control of vehicle.

.030 Immunity under the AMMA does not extend to smoking marijuana in a public place.

State v. Tagge, 246 Ariz. 486, 442 P.3d 71, ¶¶ 4–15 (Ct. App. 2019) (defendants parked in commercial lot near concert venue that was owned by City of Mesa and had been leased to radio station for parking for music festival and smoked marijuana in their vehicle; court rejected defendants' argument that "public place" was limited to enclosed areas and their argument that they were not in "public place" because they were in their vehicle).

36–2811(B) Arizona Medical Marijuana Act—Presumption of medical use of marijuana; protections; civil penalty—registered qualifying patient or caregiver.

.010 The definition of marijuana in § 36–2801(8) includes resin, and by extension hashish, and § 36–2811(B)(1) thus immunizes the use of such marijuana consistent with AMMA.

State v. Jones, 246 Ariz. 452, 440 P.3d 1139, ¶¶ 8–19 (2019) (defendant possessed 0.050 ounces of hashish).

28–672(G) Causing serious physical injury or death by a moving violation; time limitation; penalties; classification; definition—Limitation on restitution.

.010 To the extent this subsection limits a victim's right to restitution, it conflicts with the Victim's Bill of Rights and therefore is unconstitutional.

State v. Patel, 247 Ariz. 482, 452 P.3d 712, ¶¶ 2–15 (Ct. App. 2019) (superior court applied limitation in subsection (G) and reduced restitution award to $10,000; court reversed and reinstated award of $61,191.99 as ordered by municipal court). **(rev. pending)**

28–1321(A) Implied consent—Implied consent to submit to test.

.020 Informing a driver that "Arizona law requires you to submit to and successfully complete tests of breath, blood, or other bodily substance" makes any subsequent consent involuntary.

State v. Weakland, 246 Ariz. 67, 434 P.3d 578, ¶¶ 1, 6–20 (2019) (court held good-faith exception to exclusionary rule applied to blood-test evidence unconstitutionally obtained after *State v. Butler* but before *State v. Valenzuela*).

.030 Informing a driver (1) that "Arizona law states that a person who operates a motor vehicle at any time in this state gives consent to a test or tests of blood, breath, urine or other bodily substances"; (2) the officer is authorized to request more than one test and may choose the types of tests; (3) what will happen if the test results are not available or indicate a certain alcohol concentration; (4) the consequences of a refusal or unsuccessful completion the tests; and (5) then asking if the person will submit to the tests does not make any subsequent consent involuntary.

State v. De Anda, 246 Ariz. 104, 434 P.3d 1183, ¶¶ 1, 8–15 (2019) (court rejected defendant's contention that procedure provided by statute and approved in *Valenzuela* required officer to give defendant opportunity to consent to testing prior to advising of consequences of refusal).

.050 The Fourth Amendment does not require suppression of breath-test results because a warrantless breath test is allowed as a search incident to a lawful DUI arrest, thus the state need not establish that the suspect voluntarily consented to the test.

Diaz v. Bernini, 246 Ariz. 114, 435 P.3d 457, ¶¶ 6–8 (2019) (defendant was given warrantless breath test after arrest for DUI (did not contest lawfulness of arrest); test results were therefore admissible under Fourth Amendment regardless of whether her consent was voluntary).

.060 Under Arizona's implied consent statute, a law enforcement officer may obtain a blood or breath sample from a person arrested for driving under the influence only if the arrestee expressly agrees to the test; apart from any constitutional considerations, the statute itself does not require that the arrestee's agreement be voluntary.

Diaz v. Bernini, 246 Ariz. 114, 435 P.3d 457, ¶¶ 10–17 (2019) (defendant was given warrantless breath test after her arrest for DUI; court held word "consent" in subsection (A) was not same as word "agree" in subsection (B), thus held statutory requirement of express agreement to testing did not equate to or necessarily imply a voluntary consent requirement; court noted voluntary consent (or exigent circumstances) was required under the Fourth Amendment only for blood tests).

.070 The exclusionary rule is a prudential doctrine invoked solely to deter future violations, thus when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the good-faith exception applies because the deterrence rationale loses much of its force, and the exclusionary does not apply.

State v. Weakland, 246 Ariz. 67, 434 P.3d 578, ¶¶ 1, 6–20 (2019) (court held good-faith exception to exclusionary rule applied to blood-test evidence unconstitutionally obtained after *State v. Butler* but before *State v. Valenzuela*).

State v. Havatone, 246 Ariz. 573, 443 P.3d 970, ¶¶ 20–32 (Ct. App. 2019) (defendant was conscious at scene of collision, but was airlifted to hospital in Las Vegas; defendant was unconscious at hospital; officer instructed Las Vegas officers to obtain blood sample; court held conduct was governed by Nevada law; court noted that, at time of collision, Nevada "implied consent" statute permitted officers to obtain nonconsensual blood draws from unconscious DUI suspects, thus under Nevada law, good-faith exception would apply to blood draw and suppression would not be warranted).

28–1383(A)(3) Aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs—person under 15 years of age in vehicle.

.020 For the offense of aggravated driving while under the influence with a passenger under 15 years of age, the defendant's ***knowledge*** of the passenger's age is not an element of the offense that the state is required to prove.

State v. Gomez, 246 Ariz. 237, 437 P.3d 896, ¶¶ 1, 6–15 (Ct. App. 2019) (defendant crashed his car while driving 14-year-old girl home from party; he did not know her well and did not know how old she was; court held trial court properly refused defendant's request that it instruct jurors that state must prove he knew his passenger was younger than 15).

28–1594. Authority to detain persons.

.010 A peace officer or duly authorized agent of a traffic enforcement agency may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of Title 28 and to serve a copy of the traffic complaint for an alleged civil or criminal violation of Title 28.

State v. Duffy, 247 Ariz. 537, 453 P.3d 816, ¶¶ 8–15 (Ct. App. 2019) (at suppression hearing, officer testified he saw defendant commit three violations of Arizona traffic code: following another car at unsafely close distance; exceeding posted speed limit; and changing lanes in unsafe manner; court held this gave officer probable cause to stop defendant; defendant claimed officer was not credible; court held credibility was for trial court to determine)

State v. Havatone, 241 Ariz. 506, 389 P.3d 1251 (2017).

Defendant drove his SUV into an oncoming vehicle on Route 66 northeast of Kingman. A witness saw defendant exit the SUV and lie down behind the vehicle. A DPS officer responded to the scene and approached defendant, who said he was driving the SUV. The officer detected a "heavy odor" of alcohol emanating from defendant. Defendant was airlifted to a Las Vegas hospital for treatment. Without seeking a warrant, the officer followed DPS policy and instructed DPS dispatch to request that Las Vegas police officers obtain a blood sample. Defendant was unconscious when the blood sample was taken. The sample showed a blood alcohol concentration of 0.212. *Havatone* at ¶¶ 3–5.

Where police have probable cause to believe a suspect committed a DUI, a nonconsensual blood draw from an unconscious person is constitutionally permissible if, under the totality of the circumstances, law enforcement officials reasonably determine that they cannot obtain a warrant without significant delay that would undermine the effectiveness of the testing. The state expressly concedes that the record does not show exigent circumstances beyond the natural dissipation of alcohol in defendant's blood. Hence, the search violated the Fourth Amendment and the only issue is whether the good-faith exception to the exclusionary rule applies. *Havatone* at ¶¶ 18–19.

Mitchell v. Wisconsin, 139 S. Ct. 2525 (2019).

Justice ALITO, joined by THE CHIEF JUSTICE, Justice BREYER, and Justice KAVANAUGH:

Officer received report that Gerald Mitchell appeared to be very drunk and had driven off in a van. Jaeger found Mitchell wandering near a lake, stumbling and slurring his words, and barely able to stand without the support of two officers. Jaeger gave Mitchell a preliminary breath test, which registered a BAC level of 0.24% (three times legal limit). Jaeger arrested Mitchell for DUI and drove him to a police station for a more reliable breath test using better equipment (standard practice). On the way, Mitchell's condition continued to deteriorate so that, at the station, he was too lethargic even for a breath test. Jaeger therefore drove Mitchell to a nearby hospital for a blood test; Mitchell lost consciousness on the ride over and had to be wheeled in. Even so, Jaeger read aloud to a slumped Mitchell the standard statement giving drivers a chance to refuse BAC testing. Hearing no response, Jaeger asked hospital staff to draw a blood sample. Mitchell remained unconscious while the sample was taken, and analysis of his blood showed that his BAC, about 90 minutes after his arrest, was 0.222%. *Mitchell* at 2532.

Today, we consider what police officers may do in a narrow but important category of cases: those in which the driver is unconscious and therefore cannot be given a breath test. In such cases, **we hold, the exigent-circumstances rule almost always permits a blood test without a warrant.** When a breath test is impossible, enforcement of the drunk-driving laws depends upon the administration of a blood test. And when a police officer encounters an unconscious driver, it is very likely that the driver would be taken to an emergency room and that his blood would be drawn for diagnostic purposes even if the police were not seeking BAC information. In addition, police officers most frequently come upon unconscious drivers when they report to the scene of an accident, and under those circumstances, the officers' many responsibilities—such as attending to other injured drivers or passengers and preventing further accidents—may be incompatible with the procedures that would be required to obtain a warrant. Thus, when a driver is unconscious, the general rule is that a warrant is not needed. *Mitchell* at 2531.

In [cases involving unconscious drivers], the need for a blood test is compelling, and an officer's duty to attend to more pressing needs may leave no time to seek a warrant. *Mitchell* at 2535.

Thus, exigency exists when (1) BAC evidence is dissipating and (2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application. Both conditions are met when a drunk-driving suspect is unconscious, so *Schmerber* controls: With such suspects, too, a warrantless blood draw is lawful. *Mitchell* at 2537.

Justice THOMAS, concurring in the judgment:

Today, the plurality adopts a difficult-to-administer rule: Exigent circumstances are generally present when police encounter a person suspected of drunk driving—except when they aren't. . . . Under [my proposed *per se*] rule, the natural metabolization of alcohol in the blood stream creates an exigency once police have probable cause to believe the driver is drunk, regardless of whether the driver is conscious. *Mitchell* at 2539.

Justice SOTOMAYOR, with whom Justice GINSBURG and Justice KAGAN join, dissenting:

The plurality's decision rests on the false premise that today's holding is necessary to spare law enforcement from a choice between attending to emergency situations and securing evidence used to enforce state drunk-driving laws. Not so. To be sure, drunk driving poses significant dangers that Wisconsin and other States must be able to curb. But the question here is narrow: What must police do before ordering a blood draw of a person suspected of drunk driving who has become unconscious? Under the Fourth Amendment, the answer is clear: If there is time, get a warrant. *Mitchell* at 2541.

In many cases, even when the suspect falls unconscious, police officers will have sufficient time to secure a warrant—meaning that the Fourth Amendment requires that they do so. *Mitchell* at 2549.

Justice GORSUCH, dissenting:

We took this case to decide whether Wisconsin drivers impliedly consent to blood alcohol tests thanks to a state statute. That law says that anyone driving in Wisconsin agrees—by the very act of driving—to testing under certain circumstances. But the Court today declines to answer the question presented. Instead, it upholds Wisconsin's law on an entirely different ground—citing the exigent circumstances doctrine. While I do not doubt that the Court may affirm for any reason supported by the record, the application of the exigent circumstances doctrine in this area poses complex and difficult questions that neither the parties nor the courts below discussed. Rather than proceeding solely by self-direction, I would have dismissed this case as improvidently granted and waited for a case presenting the exigent circumstances question. *Mitchell* at 2551.

April 8, 2020

U.S. Const. amend. 4 Search and seizure—Legitimate expectation of privacy.

us.a4.ss.xp.010 An individual does not have automatic standing to challenge a search; an individual must have a legitimate expectation of privacy in the searched area before that interest will be protected by the Fourth Amendment, and there are two factors that determine whether the person has a legitimate expectation of privacy, the **first** of which is whether the individual, by conduct, has exhibited an actual (subjective) expectation of privacy.

State v. Fuentes, 247 Ariz. 516, 452 P.3d 746, ¶¶ 12–13 (Ct. App. 2019) (trial court accepted as true defendant's avowal that he had: (a) purchased property to secure rental income; (b) placed it in name of his son, who was serving in military and to whom he planned to offer it upon his return; (c) purchased mobile home, placed it, too, in his son's name, and located it on property; (d) collected rental income from property; (e) worked on mobile home shortly before his arrest, including painting it, repairing roof, and acquiring permit to install septic tank; (f) periodically slept or napped in mobile home when working on property; (g) possessed keys to mobile home and left it locked; and (h) left personal property, including two bedrolls and beer, inside; court held that, under totality of circumstances, it was abuse of discretion for trial court to find that defendant "did not have a legitimate expectation of privacy in this particular place"; admission of evidence found there was, however, harmless).

State v. Mixton, 247 Ariz. 212, 447 P.3d 829, ¶¶ 10–11 (Ct. App. 2019) (undercover detective investigating child exploitation placed ad on internet advertising forum targeting offenders interested in child pornography and incest, inviting those interested to contact him to join group chat on messaging application known for minimal verification of its users' identities; person (defendant) responded and provided his messaging application screen name "tabooin520" and asked to be added to group chat; defendant posted several images and videos depicting child pornography; at detective's request, federal agents served federal administrative subpoena on messaging application provider to obtain defendant's IP address; provider furnished IP address, and detective was able to determine defendant's internet service provider (ISP) by using publicly available information; again, federal agents served subpoena and were able to obtain defendant's street address; based on this information, detective obtained search warrant for that address; defendant contended officers' conduct violated his Fourth Amendment rights; court looked to federal cases and concluded internet user has no actual (subjective) expectation of privacy in IP address or personally identifying information he or she submitted to his or her ISP to subscribe to its service). **(rev. pending)**

us.a4.ss.xp.020 An individual does not have automatic standing to challenge a search; an individual must have a legitimate expectation of privacy in the searched area before that interest will be protected by the Fourth Amendment, and there are two factors that determine whether the person has a legitimate expectation of privacy, the **second** of which is whether the individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable.

State v. Mixton, 247 Ariz. 212, 447 P.3d 829, ¶¶ 12–13 (Ct. App. 2019) (court looked to federal cases and concluded any expectation of privacy in IP address or personally identifying information is not one society is prepared to recognize as reasonable). **(rev. pending)**

U.S. Const. amend. 4 Search and seizure—Arrest—Probable cause.

us.a4.ss.a.pc.010 An officer has probable cause to arrest a person when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that an offense was committed and that the person committed it.

State v. Morris, 246 Ariz. 154, 435 P.3d 1060, ¶¶ 11–13 (Ct. App. 2019) (defendant placed his backpack in shopping cart; while monitoring surveillance video, loss-prevention employee saw defendant select pair of sunglasses from display, cut off and discard price tag, and put them on; employee saw defendant select package of condoms and energy drink and put them in his shopping cart on top of his backpack; as defendant moved through store, he was out of view for about 80 seconds, and when he come into view, condoms and energy drink were no longer visible; defendant selected several other items and went to self-checkout; defendant attempted to pay for other items, but not sunglasses, condoms, or energy drink; while defendant was still at register, police officers approached him, told him they suspected him of shoplifting, and escorted him to loss-prevention office, where they formally placed him under arrest for shoplifting based on his failure to pay for sunglasses and concealment of items in backpack; court held above facts gave officers probable cause to believe defendant committed shoplifting by concealment).

U.S. Const. amend. 4 Search and seizure—Length of detention.

us.a4.ss.ld.020 For a traffic stop, the duration of the officer's inquiries must extend only as long as necessary to effectuate the purpose of the traffic stop or any related safety concerns; after the original purpose of the stop has been resolved, the officer must permit the driver to leave without further delay or questioning unless: (1) during the traffic stop the officer gains a reasonable and articulable suspicion that the driver is engaged in illegal activity; or (2) the encounter between the officer and the driver ceases to be a detention, but becomes consensual; if a driver agrees to answer additional questions after the conclusion of the traffic stop, he has not been "seized" under the Fourth Amendment and the consensual encounter may extend as long as a reasonable person would feel free to disregard the police and go about his or her business.

State v. Angulo-Chavez, 247 Ariz. 255, 448 P.3d 296, ¶¶ 6–10 (Ct. App. 2019) (officer stopped defendant for speeding; after issuing warning, officer asked defendant whether he would answer additional questions, and defendant agreed; officer became increasingly suspicious defendant was engaged in illegal activity; eventually, defendant orally agreed to allow officer to search his vehicle and signed Spanish-language DPS consent-to-search form; officer found approximately 18 pounds of methamphetamine hidden in sealed packages behind panel in trunk; court held trial court did not abuse discretion in finding continuation of original encounter was consensual and reasonable and did not constitute seizure under Fourth Amendment, thus resulting search of defendant's vehicle was consensual and lawful).

U.S. Const. amend. 4 Search and seizure—Exigent circumstances—protective sweep.

us.a4.ss.ec.ps.020 The Supreme Court has never articulated a "protective sweep" exception to the warrant requirement in the absence of a contemporaneous arrest.

State v. Fuentes, 247 Ariz. 516, 452 P.3d 746, ¶¶ 15–18 (Ct. App. 2019) (police went to property in registered in name of defendant's son; they approached mobile home there and found door open, called out to any potential occupants, received no response, and entered to perform what they termed a "security sweep"; because there was no contemporaneous arrest, search was not justified as protective sweep; admission of evidence found there was, however, harmless).

U.S. Const. amend. 4 Search and seizure—Search of a person on probation or parole.

us.a4.ss.pop.010 As long as the conditions of release authorize such a search, a warrantless search of a person on **parole** may be conducted even without reasonable suspicion; for a person on **probation,** the search must be reasonable under the totality of the circumstances, which requires that the search be conducted by a probation officer in a proper manner and for a proper purpose in determining whether the probationer is complying with the probation obligations.

State v. Lietzau, 246 Ariz. 380, 439 P.3d 839, ¶¶ 11–19 (Ct. App. 2019) (defendant was on probation with written conditions that he would submit to search and seizure of person and property by Adult Probation Department without search warrant; 4 months later, woman told defendant's probation officer she believed defendant was having inappropriate relationship with her 13-year-old daughter (S.E.); few weeks later, probation officer arrested defendant for violating conditions of probation based on his failure to provide access to his residence, participate in counseling programs, comply with drug testing, and perform community restitution; on way to jail, officer examined defendant's cell phone and saw numerous text messages between defendant and S.E.; probation department reported these findings to police department, and detective then obtained search warrant and discovered incriminating photos and text messages in phone; defendant was subsequently indicted on charges of sexual conduct with minor; court held that, under totality of circumstances, including defendant's significantly diminished privacy rights as probationer, his acceptance of search conditions when he agreed to probation, which arguably included his cell phone, probation department's well-grounded suspicion that Lietzau might be involved in serious offense with adolescent child, and well-known use of cell phones as aid in committing sexual offenses against children, officer's search of defendant's cell phone was reasonable, thus trial court abused its discretion in granting defendant's motion to suppress). **(rev. pending)**

U.S. Const. amend. 5 Self-incrimination—Voluntariness.

us.a5.si.vol.040 A confession will be found involuntary if (1) the officers engaged in impermissible conduct, or (2) the officers exercised coercive pressure that was not dispelled, or (3) the confession was derived from a prior involuntary statement.

State v. Champagne, 247 Ariz. 116, 447 P.3d 297, ¶¶ 37–39 (2019) (defendant was convicted of first-degree murder, second-degree murder, kidnapping, and abandonment or concealment of bodies; on March 3, defendant was arrested for unrelated crimes and invoked his *Miranda* rights; while defendant was in custody for those unrelated crimes, detective posed as unscrupulous private investigator and discussed with defendant his need to hide the bodies; after defendant told detective that, if police found the bodies "he would face the death penalty because of his criminal past," police found the bodies, and on March 8, state charged Champagne with present offenses; court held that trial court properly concluded there was nothing coercive about police conduct at issue and that state's conduct was neither shocking nor fundamentally unfair, and further stated no constitutional protections exist for "a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it").

U.S. Const. amend. 5 Self-incrimination—*Miranda.*

us.a5.si.mir.030 The purpose of *Miranda* was to protect a person from a "police dominated atmosphere," thus even if a person is in custody, if that person speaks voluntarily to someone the person believes is not a police officer, *Miranda* does not apply.

State v. Champagne, 247 Ariz. 116, 447 P.3d 297, ¶¶ 29–36 (2019) (defendant was convicted of first-degree murder, second-degree murder, kidnapping, and abandonment or concealment of bodies; on March 3, defendant was arrested for unrelated crimes and invoked his *Miranda* rights; while defendant was in custody for those unrelated crimes, detective posed as unscrupulous private investigator and discussed with defendant his need to hide the bodies; after defendant told detective that, if police found the bodies "he would face the death penalty because of his criminal past," police found the bodies, and on March 8, state charged Champagne with present offenses; court held that, because defendant was unaware he was speaking to detective, there was no "police-dominated atmosphere" requiring *Miranda* warning; further, although on March 3 defendant had invoked his *Miranda* rights, his subsequent statements to detective did not violate Fifth Amendment because conversations between suspects and undercover agents do not implicate concerns underlying *Miranda,* thus, trial court properly ruled no Fifth Amendment violation occurred).

us.a5.si.mir.040 Once a person is in custody, the *Miranda* warnings are a prerequisite only for the introduction of evidence that is testimonial in nature, thus the failure to give *Miranda* warnings does not preclude admission of non-testimonial evidence.

State v. Sallard, 247 Ariz. 464, 451 P.3d 820, ¶¶ 7–15 (Ct. App. 2019) (prior to defendant's arrest, officer saw her using cell phone; after defendant was arrested, she invoked her *Miranda* rights; at some point after that, officer asked defendant if she would consent to search of her cell phone, and defendant signed written consent; defendant contended evidence from her cell phone that was admitted at trial was obtained in violation of her constitutional rights; court noted defendant had only asked to remain silent and that she had never asked for attorney, and further noted request for consent to search is neither testimonial nor communicative, even though evidence uncovered may itself be highly incriminating, thus trial court did not err in denying defendant's motion to suppress).

us.a5.si.mir.260 Poor linguistic abilities, standing alone, do not invalidate an otherwise knowing and intelligent waiver; to determine whether a defendant has validly waived the *Miranda* rights, the trial court must examine the totality of the circumstances surrounding the interrogation, which includes the defendant's background, experience, and conduct, and to evaluate whether a non-native English speaker validly waived the rights, the trial court may consider such factors as (1) whether the defendant signed a written waiver; (2) whether the defendant was advised of the rights in the defendant's native tongue; (3) whether the defendant appeared to understand the rights; (4) whether the defendant had the assistance of a translator; (5) whether the defendant's rights were individually and repeatedly explained to the defendant; and (6) whether the defendant had prior experience with the criminal justice system.

State v. Klos, 248 Ariz. 40, 455 P.3d 739, ¶¶ 10–18 (Ct. App. 2019) (defendant was native Thai speaker who began to learn English when she moved to United States in 1975; she told detective she had difficulty understanding "hard words" but she could read and write in English at 10th-grade level and had passed a cosmetology test in English; during trip to police station, defendant and detective conversed in English on various topics, with defendant generally responding appropriately to detective's questions and remarks; at conclusion of advisement, defendant said "now I got it"; court concluded there was substantial evidence that supported trial court's finding that defendant was "fairly conversant" in English).

U.S. Const. amend. 5 Double jeopardy—Collateral estoppel and res judicata.

us.a5.dj.ce&rj.040 Issue preclusion may apply in a criminal proceeding when an issue of fact was previously adjudicated in a dependency proceeding and the other elements of preclusion are met.

Crosby-Garbotz v. Fell, 246 Ariz. 54, 434 P.3d 143, ¶¶ 1, 17–21, 26 (2019) (state charged defendant with child abuse based on injuries to child; in separate previous dependency action, juvenile court found defendant did not abuse child in question and dismissed dependency petition that was based solely on that alleged abuse; although court recognized there were various policy concerns that would favor not applying issue preclusion in criminal following dependency proceeding, court concluded policy concerns did not justify absolute bar to applying issue preclusion; court applied issue preclusion and held state's failure to prove child abuse in dependency action precluded state from bringing criminal charges based on same conduct).

U.S. Const. amend. 6 Confrontation and cross-examination.

us.a6.cf.040 The Sixth Amendment gives the defendant the right of confrontation, and therefore applies only to those persons who give evidence against the defendant.

State v. Sallard, 247 Ariz. 464, 451 P.3d 820, ¶¶ 16–19 (Ct. App. 2019) (defendant contended trial court erred when it considered extrinsic testimony presented at codefendant's trial; court noted trial court referred to fact that it had resolved a motion to suppress at codefendant's trial, but did not refer to extrinsic evidence or testimony in its ruling, thus trial court did not err).

U.S. Const. amend. 6 Counsel—Pre-charging.

us.a6.cs.pcg.020 The Sixth Amendment right to counsel is offense-specific, such that incriminating statements pertaining to other crimes, for which the Sixth Amendment right has not yet attached, are admissible at a trial of those offenses.

State v. Champagne, 247 Ariz. 116, 447 P.3d 297, ¶¶ 40–41 (2019) (defendant was convicted of first-degree murder, second-degree murder, kidnapping, and abandonment or concealment of bodies; on March 3, defendant was arrested for unrelated crimes and invoked his *Miranda* rights; while defendant was in custody for those unrelated crimes, detective posed as unscrupulous private investigator and discussed with defendant his need to hide the bodies; after defendant told detective that, if police found the bodies "he would face the death penalty because of his criminal past," police found the bodies, and on March 8, state charged Champagne with present offenses; defendant contended detective violated his Sixth Amendment right to counsel because he invoked that right on March 3; court held that, because defendant was not charged with present offenses until March 8, his invocation of his Sixth Amendment right to counsel on March 3 did not preclude admission of his statement).

U.S. Const. amend. 6 Counsel—Ineffective assistance of counsel; Standards.

us.a6.cs.iac.001 To establish a claim of ineffective assistance of counsel, the defendant must show counsel's representation fell below an objective standard of reasonableness, focusing on the practice and expectations of the legal community, and must show that counsel's performance was not reasonable under prevailing professional norms.

State v. Nunez-Diaz, 247 Ariz. 1, 444 P.3d 250, ¶¶ 10–12 (2019) (defendant was undocumented immigrant who entered into guilty plea that resulted in his mandatory deportation; court held defendant's attorney provided ineffective assistance of counsel in failing to advise defendant of that result of his plea).

us.a6.cs.iac.012 To establish a claim of ineffective assistance of counsel, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

State v. Nunez-Diaz, 247 Ariz. 1, 444 P.3d 250, ¶¶ 13–16 (2019) (defendant was undocumented immigrant who entered into guilty plea that resulted in his mandatory deportation; court held record showed defendant would not have entered into plea if he had known he faced mandatory deportation, thus defendant established prejudice).

U.S. Const. amend. 8 Cruel and unusual punishment.

us.a8.cu.110 In determining proportionality, courts usually do not consider the imposition of consecutive sentences.

State v. Kasic, 247 Ariz. 562, 453 P.3d 1151, ¶¶ 2–5 (Ct. App. 2019) (defendant was convicted of 32 felonies arising from series of arsons spanning 1-year period, some committed while he was under the age of 18; his combination of concurrent and consecutive prison terms totaled nearly 140 years; court rejected defendant's contention that his consecutive prison terms were unconstitutional because they collectively constituted sentence of life without possibility of parole). **(rev. pending)**

U.S. Const. amend. 14 Due process—Charging process.

us.a14.dp.cp.010 It is within the sound discretion of the prosecutor to determine whether to file criminal charges against a particular person, which charges to file, and which allegations to file, subject to certain limitations, such as not penalizing the person for invoking a legally-protected right.

State v. Dansdill, 246 Ariz. 593, 443 P.3d 990, ¶¶ 6–17 (Ct. App. 2019) (state charged defendant with second-degree murder; almost year later, state obtained second indictment charging defendant with two counts: (1) first-degree felony murder, "or in the alternative," second-degree murder; and (2) attempted armed robbery; prosecutor explained state obtained second indictment in response to defense theory that became apparent during pretrial interviews; court found no abuse of discretion in trial court's denial of defendant's motion to dismiss for vindictive prosecution).

U.S. Const. amend. 14 Due process—Collection, retention, and disclosure of evidence.

us.a14.dp.ev.030 There is no general federal constitutional right to discovery in a criminal case; the Due Process Clause of the federal Constitution imposes on the state only the obligation to disclose exculpatory evidence that is material on the issue of guilt or punishment, and the obligation not to take any affirmative action that interferes with the defendant's right to gather exculpatory evidence.

R.S. v. Thompson (Vanders), 247 Ariz. 575, 454 P.3d 1010, ¶¶ 9–28 (Ct. App. 2019) (court held physician-patient privilege does not yield to request of criminal defendant for information merely because that information may be helpful to defendant's defense, and that, to be entitled to *in camera* review of privileged records as matter of due process, defendant must establish substantial probability that protected records contain information critical to element of charge or defense, or that their unavailability would result in fundamentally unfair trial; court further held that, because defendant did not establish this substantial probability, trial court erred by granting *in camera* review of victim's privileged records).

U.S. Const. amend. 14 Due process—Identification procedures.

us.a14.dp.id.060 To establish a due process violation, a defendant must establish three factors, the **third** of which is that the identification is not otherwise reliable, which will depend on (1) the witness's opportunity to view the person, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description, (4) the witness's level of certainty at the confrontation, and (5) the length of time between the crime and the confrontation.

State v. Hernandez, 246 Ariz. 543, 443 P.3d 33, ¶¶ 9–12 (Ct. App. 2019) (officer saw car run a stop sign, which caused him to swerve to avoid collision; while trying to avoid collision, officer "locked eyes" with driver of car for 1 or 2 seconds; officer later testified driver's face was "a face that [he] would never forget"; officer attempted traffic stop, but car did not stop, which resulted in pursuit that eventually ended in parking lot, where driver and two other occupants fled on foot; officer saw driver's profile as he fled; court noted officer had opportunity to view defendant's face, "lock[ing] eyes" with him, as he swerved to avoid a collision; although officer viewed defendant briefly, his full attention was on defendant's face during the near collision; officer also saw defendant's profile as he fled on foot from car; within 3 minutes of defendant's fleeing, officer saw photograph and recognized defendant; further, officer testified he was "[v]ery certain" in his identification of defendant and that he would have been able to identify him in court without having first viewed the photograph; court held record adequately supported trial court's finding that officer's identification was sufficiently reliable to be presented to jurors, thus trial court did not abuse its discretion in admitting identification). **(rev. pending)**

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Ariz. Const. art. 2, sec. 2.1(A)(8). Victim's rights — Right to receive restitution.

az.2.2.1.a.8.070 When events or circumstances call the veracity or accuracy of evidence concerning restitution into doubt, and the defendant cannot adequately challenge that evidence without questioning the victim in open court under oath, due process requires that the defendant be given the opportunity to do so.

State v. Quijada, 246 Ariz. 356, 439 P.3d 815, ¶¶ 29–34 (Ct. App. 2019) (defendant pled guilty to trafficking in stolen property, and trial court retained jurisdiction to impose restitution; victim submitted unsworn restitution statement that contained items not reported in police report; as proceedings progresses, victim submitted amended restitution statements, each one claiming more items that in previous statements; although trial court attempted to hold restitution hearing, it was unable to do so because victim did not appear, but entered restitution order for $40,885.42; court held entering restitution order without allowing defendant to question victim about items she claimed were stolen deprived defendant of due process).

Ariz. Const. art. 2, sec. 8. Right to privacy.

az.2.8.010 Because the language of the Arizona Constitution gives greater protection to the sanctity of the home, the Arizona Constitution is more restrictive in allowing warrantless entries into the home or other warrantless searches the court deems not appropriate.

State v. Mixton, 247 Ariz. 212, 447 P.3d 829, ¶¶ 14–33 (Ct. App. 2019) (undercover detective investigating child exploitation placed ad on internet advertising forum targeting offenders interested in child pornography and incest, inviting those interested to contact him to join group chat on messaging application known for minimal verification of its users' identities; person (defendant) responded and provided his messaging application screen name "tabooin520" and asked to be added to group chat; defendant posted several images and videos depicting child pornography; at detective's request, federal agents served federal administrative subpoena on messaging application provider to obtain defendant's IP address; provider furnished IP address, and detective was able to determine defendant's internet service provider (ISP) by using publicly available information; again, federal agents served subpoena and were able to obtain defendant's street address; based on this information, detective obtained search warrant for that address; although court concluded search did not violate Fourth Amendment, court concluded it violated Arizona Constitution).

Ariz. Const. art. 2, sec. 8. Right to privacy—Actions subject to the exclusionary rule.

az.2.8.xr.030 The good-faith exception to the exclusionary rule applies when the police conduct is not objectively reasonable.

State v. Mixton, 247 Ariz. 212, 447 P.3d 829, ¶¶ 34–39 (Ct. App. 2019) (although court concluded search did not violate Fourth Amendment, court concluded it violated Arizona Constitution, but because evidence was ultimately obtained pursuant to search warrant, good-faith exception applied).

Ariz. Const. art. 2, sec. 15. Cruel and unusual punishment.

az.2.15.cu.010 There is nothing in the language of the Arizona Constitution, or in the opinions interpreting that language, to indicate that the Arizona Constitution gives a defendant any greater rights against cruel and unusual punishment than does the United States Constitution.

State v. Healer, 246 Ariz. 440, 440 P.3d 404, ¶¶ 10–12 (Ct. App. 2019) (in 1994, at age of 16, defendant robbed and murdered his elderly neighbor; jurors found him guilty, and trial court sentenced him to life imprisonment without possibility of release; court affirmed his convictions and sentences on appeal; defendant sought post-conviction relief, and supreme court held defendant was entitled to be resentenced; trial court resentenced defendant to life imprisonment with the possibility of parole after 25 years; court rejected defendant's claim that children who are tried as adults must not also be sentenced as though they were adults and that subjecting children to same mandatory sentences as adults is disproportionate).

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